

In the United States Patent and Trademark Office**RECEIVED
CENTRAL FAX CENTER****SEP 11 2007**

Appellants:	Emmanuelle C. Damay et al.	Docket No.:	20,320
Serial No.:	10/753,974	Group:	3761
Confirmation No:	6438	Examiner:	Hand, Melanie Jo
Filed:	January 7, 2004	Date:	September 11, 2007
For:	LOW PROFILE ABSORBENT PANTILINER		

Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellants respectfully submit this Brief in support of their Appeal of the Examiner's **Final Rejection** of claims 1 - 20 and 22 which was mailed on May 14, 2007.

On July 11, 2007, Appellants, pursuant to 37 C.F.R. 41.31, mailed a timely Notice of Appeal. Thus, the time period for filing this Brief ends on September 11, 2007.

Real Party in Interest

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee of record.

Related Appeals and Interferences

There are no other prior and pending appeals, interferences, or judicial proceedings known to Appellant, the Appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

Claims 1 - 20 and 22 remain in the application with claims 1 - 20 and 22 being finally rejected. Claim 21 has been cancelled. The appealed claims include 1 - 20 and 22 and appear in the CLAIMS APPENDIX of this Brief.

K-C Docket No.: 20,320

Serial No.: 10/753,974

**RECEIVED
CENTRAL FAX CENTER**

SEP 11 2007

Status of Amendments

No claim amendments were filed after receiving a final rejection of the pending claims.

Summary of Claimed Subject Matter

As claimed, the claims are directed to a disposable absorbent liner having a cover layer, a removable backing layer and a liquid impermeable baffle layer. As is set forth in independent claims 1, 2 and 3, the cover layer has a top surface and a bottom surface and the cover comprises a mixture of hydrophilic microfibers and hydrophobic microfibers. The quantity of hydrophobic microfibers located at the top surface of the cover layer is larger than the quantity of hydrophilic microfibers located at the top surface, based on a total weight of the mixture of microfibers in the cover layer. See page 3, line 31-28. In one embodiment of the present invention, the liner has a low profile and an absorbent capacity in the range of 2-10 grams, as set forth in claim 1. See page 4, lines 4-5 and page 7, lines 21-24. In a second embodiment of the present invention, the liner has a low profile and an Absorbent Intake Rate of less than about 30 seconds, as is set forth in claim 2. See page 4, lines 15-16 and page 7, lines 25-28. In a third embodiment of the present invention, set forth in claim 3, the liner has a low profile, an absorbent capacity in the range of 2-10 grams and an Absorbent Intake Rate of less than about 30 seconds.

Appellants have discovered that a pantiliner within the scope of the claims of the above-identified application provides a well balance of physical properties that allow the liner to have a low profile, while maintaining absorbency and flexibility. See page 4, lines 11-13. This provides a liner that will enable a user to wear the liner everyday between periods to help keep the user with a dry comfortable feeling.

Grounds of Rejection To Be Reviewed on Appeal

1. Whether claims 1 – 13, 15 – 20 and 22 are unpatentable under U.S.C. § 103(a) over Fell, U.S. Patent Application Publication No. 2004/0253894 in view of U.S. Patent No. 6,705,189 to Takai.

2. Whether claim 14 is unpatentable under U.S.C. § 103(a) over Fell, U.S. Patent Application Publication No. 2004/0253894, in view of U.S. Patent No. 6,705,189 to Takai and further in view of Cartwright, U.S. Patent Application Publication No. 2005/0079987.

K-C Docket No.: 20,320

Serial No.: 10/753,974

Argument

1. Claims 1 – 13, 15 - 20 and 22 are patentable under U.S.C. § 103(a) over the teachings of Fell, U.S. Patent Application Publication No. 2004/0253894 in view of U.S. Patent No. 6,705,189 to Takai.

In the statement of the rejection based on Fell et al. and Takai et al., the Examiner states that Fell et al. teaches a disposable absorbent liner having a cover layer having a top surface and an opposite bottom surface. The Examiner states that the cover of Fell comprises a mixture of hydrophilic and hydrophobic microfibers.

Appellants direct the Board of Appeals attention to paragraphs 63-65 of Fell, where a description of the bodyside liner is provided by Fell et al. What is taught here is that the bodyside liner may be prepared from natural or synthetic fibrous materials, including microfibers, or may be an apertured film. Fell et al. does not state whether the materials used to make the bodyside liner discussed in paragraph 63 are hydrophobic or hydrophilic; but materials such as polyolefins (e.g. polyethylene and polypropylene) are hydrophobic by nature. In fact, Fell implies that the bodyside liner is hydrophobic, since Fell teaches in paragraph 64 that the bodyside liner may be treated with a surfactant to make it hydrophilic. Alternatively, in paragraph 64, Fell et al. states that the bodyside liner may be prepared from a hydrophilic material. Appellants are unable to find any teaching in Fell which would suggest that the bodyside liner may be prepared from both hydrophilic and hydrophobic microfibers, which is required by the Appellants' claims, as the Examiner has stated. Therefore, Fell et al. does not teach or suggest having a cover layer on a pantiliner prepared from both hydrophilic and hydrophobic fibers.

In the Final Rejection, the Examiner goes on to acknowledge that Fell et al. fails to teach that the top surface of the cover layer has a larger quantity of hydrophobic fibers as compared to hydrophilic fibers on a weight basis. To remedy this deficiency, the Examiner relies upon Takai et al. to teach a cover sheet that is comprised of a matrix of hydrophilic microfibers with "hydrophobic strips 3" that contain 1-30% by weight filler. The Examiner equates the hydrophobic strips of Takai et al. with hydrophobic fibers, citing column 3, lines 39-57 of Takai et al. To support that the hydrophobic strips are fibers, the Examiner states that since "the hydrophobic strips 2 contain 1-30wt% filler; [t]hus the strips contain 60-99 wt% hydrophobic fibers". The Examiner goes on to state it would have been obvious to replace the cover of Fell et al. with the cover material of Takai et al.

Appellants' undersigned representative has carefully reviewed the entire disclosure of Takai et al. and cannot find any disclosure therein which states that the strips 3 are fibrous in

K-C Docket No.: 20,320

Serial No.: 10/753,974

nature. Actually, a careful review of Takai et al. reveals that the strips 3 are actually a thermoplastic film applied to the fibrous assembly 2 not a fibrous material as the Examiner contends. The Board of Appeals attention is directed to column 1, line 53 – column 2, line 6, where it is specifically stated by Takai et al. that the composite sheet is a sheet-like fibrous assembly and a film of a thermoplastic resin arranged on the upper surface of the sheet-like fibrous assembly. In column 1, lines 61-62 of Takai et al. it is specifically stated that the film is formed by a plurality of narrow strips. Likewise in column 4, lines 18-24), Takai et al. very clear states that the fibrous web has a film fused or bonded with the fibrous web.

In response to similar arguments, the Examiner dismisses these arguments by stating on page 2 of the Final Rejection”

“the that the strips are thermoplastic film [sic] does not exclude the strips or the film from being produced in a manner as to be fibrous in nature. In fact, Takai’s teaching of 1-30 wt% filler cited by is construed [sic] herein as evidence that the film is entirely fibrous or at least partially fibrous (i.e. 70-90% fibrous).”

Appellants do not understand the Examiner’s point intended by the quoted passage. If the Examiner is stating that the fact the film contains a filler means that the film is fibrous, the statement would be technically wrong. Just because a film has a filler does not make the film fibrous. If the Examiner is stating that the thin film strips are fiber-like given the fact that they are thin strips, Appellants point out that the claims are directed to microfibers, which are clearly defined in the Appellants specification at page 2, lines 19-31. In any, the claims require microfibers not fiber-like films.

The Examiner goes on to state on page 2 of the Final rejection that Takai et al. is silent regarding the method of production of the strips, therefore neither the Applicant nor Examiner can speculate definitively as to whether the strips are or are not fibrous in nature. Appellants point out that Takai et al. is clear as to how the strips are prepared. This is explicitly stated in column 4, lines 18-66 of Takai et al. It is clearly stated at line 22, that a film is used to make the strips.

As an aside, the Examiner has the burden to establish a *prima facie* case of obviousness. The Examiner’s statement regarding speculation as to the nature of the strips of Takai et al. implies that it would be unknown if the strips are fibrous. The Examiner’s statement should be considered an admission by the Examiner that one skilled in the art could not determine that the strips of are fibrous. Therefore, by this admission the Examiner admits that a *prima facie* case of obviousness has not been established.

In order for a claim to be held obvious, the claimed invention “as a whole”, including all of

K-C Docket No.: 20,320

Serial No.: 10/753,974

the limitations of the claims, must be taught or suggested in the references relied upon by the Examiner. Combining the cover of Takai et al. with the teachings of Fell et al. would not lead one skilled in the art to the claimed invention. Specifically, combining the cover of Takai et al. with Fell et al. would lead to an absorbent article having a cover made of thermoplastic film laminated to a fibrous substrate. As a result, combining Takai et al. with Fell et al., as suggested by the Examiner, does not teach or suggest all the limitations of the present claims; in particular, the limitation requiring that the cover have more hydrophobic fibers at the top surface than hydrophilic fibers. Therefore, independent claims 1, 2 and 3 are not rendered unpatentable based on the combined teachings of Fell et al. and Takai et al.

Regarding dependent claims 4-13, 15-20 and 22, each of these claims depends from one or more of the independent claims and thus contains the limitations of the independent claims. These dependent claims are patentable for the same reason that claims 1, 2 and 3 are patentable, as is stated above. Therefore, rejection under 35 U.S.C. § 103(a) based on Fell et al. and Takai et al. is untenable and should be withdrawn.

2. Claim 14 is patentable under U.S.C. § 103(a) over Fell, U.S. Patent Application Publication No. 2004/0253894, in view of U.S. Patent No. 6,705,189 to Takai and further in view of Cartwright, U.S. Patent Application Publication No. 2005/0079987.

Cartwright et al. is not combinable with Fell et al. and Takai et al. since Cartwright et al. is directed to a premoistened antimicrobial wipe or pad (which may be placed on a cleaning implement) while Fell et al. and Takai et al. are directed to an absorbent personal care article (Fell et al.) and a material which may be used on an absorbent personal care article (Takai et al.). In the statement of the rejection, the Examiner states that Cartwright et al. teaches that fold lines could be imparted to a pad so that the pad may be folded. Even though Cartwright et al. teaches that wipes or cleaning pads for cleaning implements may be folded, the Examiner has not addressed the issue of why one skilled in the art would look to the premoistened antimicrobial wipe art to solve a problem relating to an absorbent pantiliner.

It is well established that the Examiner must determine what is analogous prior art for the purposes of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re*

K-C Docket No.: 20,320

Serial No.: 10/753,974

Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."). Appellants note that Fell et al. and Takai et al. are within Appellants' field of endeavor, but Cartwright et al. is not. In the Final Rejection, the Examiner contends that Cartwright et al. teaches an absorbent article and the reference is concerned with folding of an absorbent article. Cartwright et al. is directed to a pre-moistened wipe, not to an absorbent wipe as the Examiner has contended.

Even if Cartwright et al. is combined with Fell et al. and Takai et al., as suggested by the Examiner, Cartwright et al. fail to cure the deficiencies of Fell et al. and Takai et al. Specifically, the Examiner does not address how the combination of Fell et al. and Takai et al. and Cartwright et al. teach the claim limitations of claims 1, 2 and 3, which require that the quantity of hydrophobic fibers at the surface of the cover layer is greater than the amount of hydrophilic fibers at the top surface on a weight basis. As with the rejection under 35 U.S.C. § 103(a) based on Fell et al. and Takai et al., the Examiner's own admission in the statement of the rejection, the claim requirement that the quantity of hydrophobic fibers at the surface of the cover layer is greater than the amount of hydrophilic fibers at the top surface on a weight basis, is not taught by Fell et al. and, as explained above, Takai et al. fails to remedy this deficiency of Fell et al. In addition, the Examiner has not addressed how Cartwright et al. cures or addresses this deficiency of Fell et al. and Takai et al.

In order for a claim to be held obvious, the claimed invention "as a whole", including all of the limitations of the claims, must be taught or suggested in the references relied upon by the Examiner. Given that the limitations of the independent claims 1, 2 and 3 do not teach the claim requirement that the quantity of hydrophobic fibers at the surface of the cover layer is greater than the amount of hydrophilic fibers at the top surface on a weight basis, the combination of Fell et al., Takai et al. and Cartwright et al. fail to render the claims obvious within the meaning of 35 U.S.C. § 103. Therefore, this rejection is untenable and should be withdrawn.

Conclusion

For the reasons stated above it is Appellants' position that the Examiner's rejection of claims has been shown to be untenable and should be reversed by the Board.

K-C Docket No.: 20,320


Serial No.: 10/753,974

Please charge the \$500.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

The undersigned may be reached at: (770) 587 - 8621

Respectfully submitted,

EMMANUELLE C. DAMAY ET AL.

By: 
Ralph H. Dean, Jr.
Registration No.: 41,550

K-C Docket No.: 20,320

Serial No.: 10/753,974

Claims Appendix

The claims on appeal are:

1. A disposable absorbent liner for use in a crotch portion of underwear comprising:
a cover layer having a top surface and an opposite bottom surface, the cover layer comprising a mixture of hydrophilic microfibers and hydrophobic microfibers, wherein a quantity of hydrophilic microfibers and hydrophobic microfibers are located at the top surface and a quantity of hydrophobic microfibers located at the top surface is larger than a quantity of hydrophilic microfibers located at the top surface, based on a total weight of the mixture of microfibers in the cover layer;
a removable backing layer;
a liquid impermeable baffle layer having a top surface and an opposite bottom surface with the baffle layer being disposed between the cover layer and the backing layer; and,
wherein the absorbent liner has a low profile and an Absorbent Capacity in the range of about 2 grams to about 10 grams.
2. A disposable absorbent liner for use in a crotch portion of underwear comprising:
a cover layer having a top surface and an opposite bottom surface, the cover layer comprising a mixture of hydrophilic microfibers and hydrophobic microfibers, wherein a quantity of hydrophobic microfibers located at the top surface is larger than a quantity of hydrophilic microfibers located at the top surface, based on a total weight of the mixture of microfibers in the cover layer;
a removable backing layer;
a liquid impermeable baffle layer having a top surface and an opposite bottom surface with the baffle layer being disposed between the cover layer and the backing layer; and,
wherein the absorbent liner has a low profile and an Absorbent Intake Rate of less than about 30 seconds.
3. A disposable absorbent liner for use in a crotch portion of underwear comprising:
a cover layer having a top surface and an opposite bottom surface, the cover layer comprising a mixture of hydrophilic microfibers and hydrophobic microfibers, wherein a quantity of hydrophobic

K-C Docket No.: 20,320

Serial No.: 10/753,974

microfibers located at the top surface is larger than a quantity of hydrophilic microfibers located at the top surface, based on a total weight of the mixture of microfibers in the cover layer;

a removable backing layer;

a liquid impermeable baffle layer having a top surface and an opposite bottom surface with the baffle layer being disposed between the cover layer and the backing layer; and,

wherein the absorbent liner has a low profile and an Absorbent Capacity in the range of about 2 grams to about 10 grams and an Absorbent Intake Rate of less than about 30 seconds.

4. The absorbent liner of claims 1, 2 or 3 wherein the top surface of the baffle layer is secured to the bottom surface of the cover.

5. The absorbent liner of claims 1, 2 or 3 wherein the backing layer is removably secured to the bottom surface of the baffle layer.

6. The absorbent liner of claims 1, 2 or 3 wherein the top surface of the baffle layer is secured to the bottom surface of the cover and the backing layer is removably secured to the bottom surface of the baffle layer.

7. The absorbent liner of claims 1 or 3 wherein the Absorbent Capacity is between about 3 grams and about 9 grams.

8. The absorbent liner of claim 7 wherein the Absorbent Capacity is between about 4 grams and about 8 grams.

9. The absorbent liner of claims 2 or 3 wherein the Absorbent Intake Rate is less than about 20 seconds.

10. The absorbent liner of claim 9 wherein the Absorbent Intake Rate is less than about 10 seconds.

K-C Docket No.: 20,320

Serial No.: 10/753,974

11. The absorbent liner of claims 1, 2 or 3 wherein the absorbent liner has Density greater than about 0.2 grams per cubic centimeter.

12. The absorbent liner of claim 11 wherein the absorbent liner has Density greater than about 0.225 grams per cubic centimeter.

13. The absorbent liner of claim 11 wherein the absorbent liner has Density greater than about 0.25 grams per cubic centimeter.

14. The absorbent liner of claims 1, 2 or 3 wherein the liner comprises a periphery and at least one fold line defining a central area and two side areas, wherein the liner may be adjusted in size by folding the liner along the fold line.

15. The absorbent liner of claims 1, 2 or 3 wherein an underwear attaching material is provided on at least a portion of the bottom surface of the baffle layer.

16. The absorbent liner of claims 1, 2 or 3 wherein the cover layer is a nonwoven integral matrix of the mixture of microfibers.

17. The absorbent liner of claims 1, 2 or 3 wherein the microfibers at the top surface of the cover layer are formed into elongated MD peaks and valleys spaced apart from each other in the CD.

18. The absorbent liner of claim 17 wherein the Peak-to-Valley Depth of the elongated MD peaks and valleys is between about 0.1 mm and about 0.5 mm.

19. The absorbent liner of claim 17 wherein the Peak-to-Peak Separation of the elongated MD peaks relative to the CD is between about 0.5 mm and about 3 mm.

20. The absorbent liner of claim 18 wherein the Peak-to-Peak Separation of the elongated MD peaks relative to the CD is between about 0.5 mm and about 3 mm.

K-C Docket No.: 20,320

Serial No.: 10/753,974

21. (Canceled)

22. The absorbent liner of claims 1, 2 or 3 wherein the hydrophilic microfibers comprise greater than 65% and up to 80% of the microfibers based on a total weight of the mixture of microfibers in the cover layer and the hydrophobic microfibers comprise the remainder of the mixture of microfibers in the cover layer.

K-C Docket No.: 20,320

Serial No.: 10/753,974

Evidence Appendix

There is no evidence relied upon to include in the appendix.

K-C Docket No.: 20,320

Serial No.: 10/753,974

Related Proceedings Appendix

There are no related proceedings to include in the appendix.

K-C Docket No.: 20,320

Serial No.: 10/753,974

CERTIFICATE OF TRANSMISSION

I, Pauline Turner, hereby certify that on September 11, 2007 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

Typed or printed name of person signing this certificate:

Pauline Turner

Signature:

